S. Bij. 8/53

1953. **File No.**

K

Legal DEPARTMENT
E. BRANCH

Examined

Subject:— Suits.... Bijapur

Civil Suit No. 189 of 1952—

Shri Timmayl Narahar Nadgir..... Plff.

V/s

The State of Bombay - - - - - Deft.

For a declaration that there was no encroachment on the Gaothan of the village Halgeri made by the plff. and the order is illegal, ultra vires etc.

22(E)

File No. S. Bij. 8/53

Std. Scott. Slip 24-B

8/53

C.S. 189/1952.

In the Court of the Civil Judge, Sr. Dn., Bijapur

1. Timmaji Narhar Nadgir, Brahmin, 60, agriculturist of Kerur, taluka Badami.

(Plff)

Vs.

1. The Bombay State. (Defendent)

Herein the plaintiff above named begs to state as follows:-

1. The plaintiff brings the suit for a declaration that the order passed by the Bombay State through its Revenue Officers that the plaintiff has made an encroachment of 3 gunthas in the Gavathan of Halgeri of Badami taluka, Bijapur district is both illegal and ultravires and for an injunction against the defendent not to execute the order of the alleged encroachment through their officers.

2. The facts leading to the suit are briefly as follows:-

(a) The plaintiff is the owner of Halgeri, taluka Badami, Dist. Bijapur, the S.No. 50,-17A-13G, Asstt. 12-7-0, being the purchaser from one Ramchandra Navalgund as far back as on 19-1-1929 and immediately after purchase the Plaintiff removed the prickly pear from the land and wanted to cultivate the land in its entirety. Owing to the overgrowth of prickly pear, the boundary demarcations were not distinctly visible and therefore plaintiff applied for the survey and measurement of the land in 1932 and accordingly the measurement was made, the boundary lines were fixed in 1933. The plaintiff then after began to construct the embankment for the protection of his land from stray cattle and human beings. When the bunding was in progress the enemies of the plaintiff with the aid of the village officers began to create trouble.

The land was once measured during 1934-35 in connection with the alleged encroachment by the Cadastrial surveyor and at that time it was noticed that there was no encroachment.

(b) On the report of the encroachment by the Village Officers, the Mamlatdar ordered the stoppage of bunding operation. Though plaintiff was bound to pay for survey measurement, plaintiff again paid for the measurement. On 28-5-1934 the Survey Officer again made the measurement and found that boundaries were correct and in fact there was no encroachment. All these documents were produced in due course in the encroachment proceedings.

The same land was measured again during 1945-46 in connection.

(c) Another attempt was made by the enemie of the plaintiff to trouble him. Having failed in their attempt to snatch a portion of the land for gavathan, they set up a demand, by the villagers for

burial ground. In these proceedings they again set upfor the third time encroachment of 5 gunthas. Though this was not a regular proceeding for encroachment, the survey officer went beyond his inquiry and reported the alleged encroachment. Plaintiff however protested against this survey measurement as it was done behind his back and without due notice to the Plaintiff as was necessary under the Survey Manual and plaintiff made an appeal against this survey measurement and in the meantime Land Records Inspector ordered the plaintiff to remove the encroachment.

with the acquisition of land out of the land in dispose (S.No. 50) for burial ground. During this measurement, it was noticed that there was an encroachment to the extent of 0-4-0 gunthas. But the D.I.L.R. Bijapur in appeal measurement held that there was an encroachment to the extent of 0-3 gunthas only instead of 0-4-0 gunthas. (Vide D.I.L.R's report at page 41). As the measurement done during 1945-46 has been tested and confirmed by the D.I.L.R. Bija ur in appeal this will have to be taken as correct and final. On the strength of the D.I.L.R's report the appellant was asked to remove the encroach-ment, but he requested the Prant Officer to grant him the encroached site on O.P. and rent, but it was refused. He then approached the Collector and Commissioner in appeal, to set aside the Prant Officer's order, but it was rejected. He has now approached the Civil Court.

As these orders of Government are illegal and ultravires and capricious and opposed to all known cannons of justice, the plaintiff prays for the declaration and injunctions stated above.

In view of the alleged encroachment as -ated above, the eviction order passed under section 61 L.R.C. read with section 202 is quite legal.

3. It is not competent for the Bombay State to agitate and re-agitate same question of encroachment in one form or another and harass the plaint-ff; and if the plaintiff had ever made any statements contrary to his rights these statements must have been made in ignorance of the right of the Plaintiff and hence not binding on him and the plaintiff has never admitted the alleged encroachment.

The State Government has not agitated and re-agitated the same question of encroachment. The appellant's land which was measured for the second time i.e. during 1945-46 has to be taken as final as this has been tested and confirmed by the D.I.L.R. in appeal.

The appellant has admitted encroach-ments in his statements recorded by the Revenue Officers (vide his state-ments at pages 53 and 63). He is now contradicting his own statement

Further, the orders of the Revenue Officers in question are contradictory un-intelligible and of varying orders. The orders are also bad for want of definiteness.

The orders are quite clear, legal and based on facts.

4. The plaintiff and the property in question with respect to which declara-tion and injunction are prayed for are situated within the jurisdiction of this Court and the suit is against Bombay State this Court alone has jurisdiction to try this suit.

This is baseless. The order passed by the Commissioner is quite legal.

5. The orders for the removal of embankment etc. are made finally by Commissioner on 21-1-1949 and the orders being illegal and passed without any authority etc. are null and void.

The plaintiff has admitted in his plaint(para 2(a) that he has purchased the land in 1929. Hence his contention that he is in possession of the land for more than 100 years is baseless. He has also led no evidence either oral or documentary in support of his contention. His claim is prima-facie frivolous and untenable.

6. The plaintiff and his predecessors have been using this alleged portion of Gavathan for more than 100 years. Plaintiff has become owner by adverse possession even against Government.

The cause of action arose on 21-4-47 when notice under Section 61 read with Section 202 L.R.C. was issued by the Mamlatdar on 21-4-1947. But the matter was kept pending as the encroacher (Plaintiff) approached the Prant Officer for reconsider--ation and the Collector and the Commissioner in appeal. The final order of the Commissioner was made known to the plaintiff on 21-1-1949. The plaintiff issued a notice on 8-8-1949 to the State Government under Section 80 C.P.C. but did not file any regular Civil Suit then. He kept quiet for nearly 3 years and when the Revenue Authorities pressed for the removal of the encroachment, he has filed a regular Civil Suit now. As the suit is not filed within one year from the date on which the cause of action arose, it is time-barred.

7. The cause of action arose in the month of March 1952 when the Bombay State attempted to enforce the illegal order passed by the Mamlatdar, Prant Officer, the Collector of Bijapur and the Commissioner, Southern Division, from time to time.

Yes. Notice has been servied on 4-4-52.

7-A Notice as required under Section 80 of the C.P.C. is given for the inform--ation of the defendent.

8. The Court fees are paid on declara--tion and injunction Rs. 18-12-0 and 5-0-0 and for the purpose of pecuniary jurisdiction it is the same Rs. 200/-

The D.I.L.R. Bijapur has, in appeal measurement, held that there is an encroachment to the extent of 0-3-0 gunthas as shown in the P.T.sheet at page 1. The orders of removal of the encroachment are in accordance with the provisions contained in Section 61 read with Section 202 L.R.C. and are legal.

9. The plaintiff prays that:-

(1) It should be declared that there was no encroachment on the gaothana by the plaintiff and that an injunction be issued against Government not to enforce the orders of removal of the embankment on the alleged ground of encroachment, by declaring that the order was illegal and ultravires, capricious and unjust and unauthorised and to withdraw those orders.

(2) The costs of the suit should be awarded.

(3) Any other equitable relief.

(4) Permission may be granted to amend the plaint if and when found necessary for the equitable adjusdication of the issues between the parties.

Bijapur.

Dated 12th June 1952.

Plaintiff,

I, Tammaji Narhar Nadgir, Brahmin, 60, agriculturist, of Kerur, taluka Badami, solemnly affirm that the foregoing is true to the best of my knowledge information and belief.

Bijapur.
12th June 1952.

Plaintiff.

Filed in Court on 12-6-1952.

Pleader.

5

Bijapur Civil Suit No.189 of 1952.

This is a suit filed by one Shri Timmaji Narahar Nadgir of Kerur in Badami Taluka of the Bijapur District against the State of Bombay for a declaration that there was no encroachment on the gaothan of the village Halgeri made by the plaintiff and the order directing removal of the alleged encroachment is illegal, ultra vires etc. and for a permanent injunction restraining Government from enforcing the said order.

2. The suit is defensible.

3. Defence of the same may be sanctioned on the lines of the accompanying brief.

No. 1560/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 23 7 , 1953.

Subject:- Bijapur Civil
Suit No. 189 of 1952.

MEMORANDUM:

The District Government Pleader, Bijapur is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which is sent herewith in advance. Papers of the case in two files received from the Collector accompany.

for Remembrancer of Legal Affairs.

To
The District Government Pleader, Bijapur

HSP/8/6 Issued on 23/7

Submitted for signature
22/7

GRLD No 19105/E Dt 18/9/53
has been sent to the press on 21/9/53

IN THE COURT OF THE CIVIL JUDGE,
SENIOR DIVISION. BIJAPUR.

9

Civil Suit No. 189 of 1952.

(1) Timmaji Narahar Nadgir. .... Plaintiff.

Vs.

(1) The State of Bombay. .... Defendant.

Herein the defendant by his Written-statement states as under:-

1. This defendant denies the plaintiff's claim in suit.

2. Plaintiff's suit is barred by time under article 14 of the Indian Limitation Act, and section 37(3) of the Land Revenue Code.

3. The measurement and finding of the District Inspector of Land Records and the orders of the Revenue Officers there-after are legal and valid and the allegation that they are illegal, that they are passed without any authority and that they are null and void as made in ~~the~~ para 5 of the plaint are not correct and are denied.

4. The allegations in para 6 of the plaint are not true.

5. The plaintiff has no cause of action and the allegations to the contrary as made in para 7 of the plaint are denied.

6. The plaintiff is not entitled to any of the reliefs prayed for by him.

7. This defendant does not admit that the plaintiff is the owner of 17 acres and 13 gunthas as contended in para 2A of the plaint. The allegation that the enemies of the plaintiff with the aid of the village Officers began to create trouble and that the boundary lines were fixed in 1933 as made in para 2A of the plaint are not admitted.

8. The Surveyer, while measuring S.No.50, noticed an encroachment of 4 gunthas made by the plaintiff on Gowthan land. He reported the matter to the higher Authorities. At

the instance of the plaintiff, the work of measurement was undertaken and tested on 11-5-1946 by the District Inspector of Land Records after giving due notice to the plaintiff. The District Inspector of Land Records found that the plaintiff has encroached upon Gowthan to the extent of 3 gunthas as shown in the sketch. The plaintiff agreed to part with the encroached portion and made a statement to that effect before the District Inspector of Land Records. Thereafter he prayed for the grant of the encroached portion of 3 gunthas to him by taking the amount valued by the panchas. Plaintiff also made a statement to that effect on 6-8-1946. The Prant Officer directed the removal of the encroachment on 24-11-1946. The Prant Officer accorded - sanction to issue notice to the plaintiff under section 202 of the Land Revenue Code and he further directed that if plaintiff were to fail to remove the encroachment, it should be removed at the cost of the plaintiff. Accordingly the Mamlatdar Badami gave the necessary notice to the - plaintiff to vacate the encroached portion within one month from the date of the notice which was served on the plaintiff on 26-4-1947.

9. The plaintiff applied to the Prant Officer for consideration and the Prant Officer rejected the request of the plaintiff on 5-7-1947. The Prant Officer sent the papers to the Mamlatdar Badami for further necessary action and the Mamlatdar forwarded it to the Circle Officer for removal of the encroachment. The plaintiff approached the Collector and the Collector dismissed the plaintiff's appeal on 23-7-1948. The plaintiff approached the Commissioner who rejected the plaintiff's appeal on 21-1-1949.

10. The measurement and the boundaries - alleged in para 2(b) of the plaint and the allegations therein that there was no encroachment are not correct. The allegation in para 2(c) of the plaint to the effect that "Another attempt ..... the alleged encroachment" is not correct

and is denied.

11. The allegation in para 2(c) of the plaint that all the orders of the Government are illegal and ultra-vires and capricious and opposed to cannons of justice are false.

12. The allegations in para 3 of the plaint are not true. The plaintiff admitted the test measurement made by District Inspector of Land Records and made a statement about the removal of encroachment of three gunthas. These statements of the plaintiff are not contrary to his rights and the allegations in para 3 of the plaint that they must have been made in ignorance of the right of the plaintiff, that they are not binding on him, that the plaintiff has never admitted the encroachment of three gunthas and that the orders of the Revenue Officers are contradictory, unintelligible, varying and bad for definiteness are not correct and are denied. The allegation in para 6 of the plaint that the plaintiff and his prodecessors have been using the land of three gunthas encroached upon, for more than 100 years is not true. It is not true that the plaintiff has become owner by adverse possession as alleged in para 6 of the plaint.

13. The plaintiff has made an encroachment of 3 gunthas of land as found by D.I.L.R. and as admitted by the plaintiff to him. The measurement on which the plaintiff relies in Para 2(b) of the plaint is not correct The allegation in para 2(b) that in the year 1934 , the Survey Officer found that the boundaries are correct and that in fact there was no encroachment are not correct.

14. The plaintiff has made an encroachment of 3 gunthas on Gowthan land and therefore he is liable to be evicted and the encroachment is liable to be removed.

15. It is open to the plaintiff to move the Court for appointing the Distridt Inspector of Land Records as Commissioner to take fresh measurements and

to report to the Court as to whether there is any encroachment or not.

On these grounds among others, it is submitted that the suit be dismissdd with costs.

Assistant Government Pleader,
Bijapur.

Herein I, J.R.Desai, Assistant Government Pleader, Bijapur hereby declare that what is stated in paras 1 to 15 above is true on information received and believed to be true.

Signed in Bijapur on

Assistant Government Pleader,
Bijapur.

13

ISSUES. Regular C.S.No.189 of 1952.

(1) Whether the defendant proves that the suit is barred under Art. 14 of the Indian Limitation Act and Sec.37(3) of the Land Revenue Code ?

(2) Whether the plaintiff proves that the orders passed by the District Inspector of Land Records and the Revenue authorities are illegal or improper or ultra vires as alleged ?

(3) Whether the plaintiff proves that he is the owner of the alleged encroached portion ?

(4) Whether the plaintiff is entitled to the declaration sought and the ~~k~~ injunction claimed ?

(5) What decree ?

Sd.M.H.Kazi.

3-10-1953. Civil Judge,Sr.Dn

15 : 37

Suits :

Bijapur.

For a declaration that there was no encroachment on the Gaothan of the village Halgeri made by the plaintiff and the order directing removal of the alleged encroachment is illegal, *ultra vires* etc.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 19105/E.

Bombay Castle, 18th September 1953.

Letter from the Collector of Bijapur, No. LAW-214, dated the 17th September 1952—Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 189 of 1952.

Shri Timmayi Narahar Nadgir ... ... — Plaintiff;

versus

he State of Bombay ... ... — Defendant.

Memorandum to the District Government Pleader, Bijapur, No. 15609/E, dated the 23rd July 1953—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

R V Kothawale

Original for { J. R. DHURANDHAR,
Secretary to Government.

G. R., No. 19105/E, L. D., dated the 18th September 1953.

To

* The Revenue Department,
* The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

* With a copy of the brief.

No. of 1953.

Copy forwarded for information and guidance to

Sd/ Cuf 11/12

Sabd. after
Fr mf S. Bijapur. 1/53 (Mad)
21/12/53
S.S. (Rel)
2/12

17 39

BIJAPUR CIVIL SUIT No. 189 OF 1952.

Chronological Statement of Facts.

The plaintiff is the owner of land bearing Survey No. 50 situated in the village Halgeri in Badami Taluka of the Bijapur District. In the North side of this land and adjoining it is gaothan land of the said village. In 1945-46, the Surveyor while measuring Survey No. 50 in connection with the proposed acquisition of a portion thereof for burial ground noticed an encroachment of 4 gunthas made by the plaintiff on gaothan land and reported the matter to the higher authorities. Thereupon the plaintiff having objected to the measurement made by the Surveyor, the District Inspector of Land Records tested the measurement on 11th May 1946 and found that the encroachment made was to the extent of three gunthas and not four gunthas as stated by the Surveyor. In his statement made before the District Inspector of Land Records on 11th and 12th May 1946, the plaintiff admitted the encroachment and requested for the grant of the encroached site to him on payment of occupancy price and assessment. But his request was refused by the Prant Officer who directed removal of the encroachment under his order No N.C.R.-129 dated 24th November 1946. Thereafter on notice being issued by the Mamlatdar, Badami Taluka, against the plaintiff under section 202 of Bombay Land Revenue Code for the removal of the encroachment, the plaintiff applied to the Prant Officer for reconsideration of the matter. But he was informed by the Prant Officer under his No. NCR-129 dated 5th July 1947 that his request to reconsider the matter was refused since the Prant Officer cannot revise his own order. Against this order of the Prant Officer, the plaintiff preferred an appeal to the Collector but the same was summarily dismissed by the Collector under his order No. NCR. 605 dated 23rd July 1948. Then the plaintiff went in second appeal to the Commissioner, Southern Division, but it was also dismissed by that officer under his order No. LND.AP. 1523 dated 17th/21st January 1949. Then the plaintiff gave notice of suit to Government under section 80 of the Code of Civil Procedure on 8th August 1949 and again on 4th April 1952 and filed the present suit on 12th June 1952 for a declaration that there was no encroachment made by the plaintiff on the gaothan of the village Halgeri and that the order directing removal of the alleged encroachment is illegal, *ultra vires* etc. and also for a permanent injunction restraining Government from enforcing the said order.

Grounds of Defence.

Bar of limitation.—A notice under section 202 of the Bombay Land Revenue Code for the removal of the encroachment in question was issued by the Mamlatdar, Badami Taluka against the plaintiff on 21st April 1947. This is in effect a suit to set aside the said order. According to Article 14 in the First Schedule to the Indian Limitation Act

a suit to set aside any order of an officer of Government in his official capacity must be brought within one year from the date of the order. The order of the Mamlatdar is dated 21st April 1947, while the suit has been brought on 12th June 1952 i.e. more than one year after the date of the said order. The suit is, therefore, clearly time-barred.

Merits.—The main contention of the plaintiff is that there is no encroachment made by him on the gaothan land and in support of this contention of his the plaintiff relies upon the measurement made in 1934-35 when no such encroachment was found by the Surveyor. The measurement made at that time by the Surveyor does not seem to be correct. It was not tested by any higher officer as it has been done this time. The measurement made by the Surveyor in 1945-46 was tested by the District Inspector of Land Records and it is this latter officer that has confirmed that there is an encroachment to the extent of three gunthas on the gaothan land made by the plaintiff and it must be taken to be correct. Moreover, the said encroachment has been admitted by the plaintiff himself in his statements dated 11th May 1946 and 6th August 1946 made respectively before the District Inspector of Land Records and the Circle Officer. It is, however, urged by the plaintiff that he has never admitted the encroachment and that if he made any statements to that effect, they must have been made by him in ignorance of his right and so they are not binding on him. It is clear from the above statements that the fact of encroachment was admitted by the plaintiff before the aforesaid officers and that he made these statements after being satisfied that there was an encroachment. Further this fact is confirmed by the request made by the plaintiff for the grant of the encroachment site to him on payment of occupancy price and assessment. The above contention of the plaintiff is not, therefore, correct and it should be denied. Furthermore the District Government Pleader is requested to bring the plan prepared in 1931 as well as that prepared in 1946 on record of the Court and examine the District Inspector of Land Records to prove how the map of 1934 was incorrect and that of 1946 is correct. In this connection the District Government Pleader is also requested to suggest to the plaintiff that as he wants a decree, he may move the Court for appointing the District Inspector of Land Records as Commissioner to take fresh measurements of the land in the presence of and after notice to both the parties and report to the Court as to whether there is an encroachment or not. This will greatly help the Court in deciding the matter.

Another contention of the plaintiff is that the orders directing removal of embankment on the alleged ground of encroachment are illegal, *ultra vires* and void. The plaintiff has not stated how these orders are illegal, *ultra vires* or void as alleged by him. Under section 61 of the Bombay Land Revenue Code, it is quite competent for the

Collector to evict summarily in the manner provided in section 202 thereof any person found unauthorizedly occupying any unoccupied land which has not been alienated and also to remove summarily any construction erected thereon, if the same is not removed by the person concerned after such written notice to him as the Collector may deem reasonable. In the present case the plaintiff having been found to have encroached upon unoccupied gaothan land in constructing the bund, he was directed to remove the encroachment and these orders of removal were perfectly legal, valid and proper. The contention of the plaintiff to the contrary should, therefore, be denied. It should also be denied that these orders were in any way capricious, unauthorised or opposed to any known canons of justice as alleged by the plaintiff. The averment of the plaintiff in paragraph 3 of the plaint as to the said orders being contradictory, uninteligible etc. should also be denied.

It is also contended by the plaintiff that he and his predecessors have been using the alleged portion of gaothan for more than 100 years and thus he has become owner by adverse possession against Government. In order to establish this plea, the plaintiff has to prove that he and his predecessor-in-title have been in possession of the portion in question for sixty years and that such possession was adequate in continuity, publicity and extent. According to the statement of the plaintiff in paragraph 1 of the plaint, he purchased survey No. 50 from Shri Ramchandra Nawalgund only on 19th January 1929 and that he began the construction of the embankment after the boundary lines were fixed in 1933. Prior to that there was prickly pear on the land. This is sufficient to show that the plaintiff's construction is of very recent date. So his plea of adverse possession fails.

The plaintiff is not entitled to the declaration or any other relief claimed by him.

For all these reasons, it should be urged that the plaintiff's suit fails and it may be dismissed with costs.

21

42

8/53

No. 1354 of 1955.
5-9-1955.

To

The Collector of Bijapur.

Subject:- Bijapur Civil Suit No. 189 of 1952.
(1)Timmaji Narhar Nadgir.
Vs.
(1) The State of Bombay.

Sir,

The plaintiff died and his heirs were not brought on record in time.

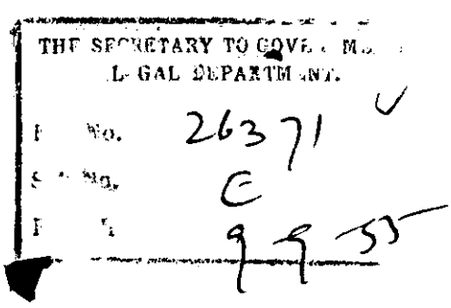
The Court, therefore, passed an order to the effect that the suit abates. The Court ordered the costs of the deft (namely the State of Bombay) to be borne by the Estate of the deceased.

Files No.I and II received from by me from the R.L.A. under my No. 15609/E of 23-7-1953 are sent herewith.

Yours faithfully,

Sd.A.C.Angadi.

Dist.Govt.Pleader,Bijapur.



No. 1355 of 1955.
5-9-1955.

Copy respectfully forwarded to the Remembrancer of Legal Affairs, Sachivalaya, Bombay.

Angadi

District Govt.Pleader,Bijapur.

Submitted for information
file in S. Bij. 8/53

10/9

Sect (R&S) to-

Presented on 12-6-1952. C.S.No. 189 of 1952.
Sd.S.A.Anchi.
C.O.C.

In the Court of the Civil Judge,Sr.Dn.Bijapur.

1. Timmaji Narhar Badgir, Brahmin,
60, agriculturist of Kerur,
Taluka Badami. .... Plff.

vs.

1. The Bombay State; .... Deft.

Claim Rs 205/-

Herein the plff abovenamed begs to state as follows:-

1. The plff brings the suit for a declaration that the order passed by the Bombay State through its Revenue Officers that the plaintiff has made an encroachment of 3 Gunthas in the Gavathan of Halgeri of Badami Taluka District Bijapur is both illegal and ultravires and for an injunction against the defendant not to execute the order of the alleged encroachment through their officers.

2. The facts leading to the suit are briefly as follows:-

(a) The plff is the owner of Halgeri Taluka Badami District Bijapur S.No. 50, A-17, G-13, assessed at Rs 12-7-9, being the purchaser from one Ramchandra Navalgund as far back as on 19-1-1929 and immediately after purchase the plff removed the prickly pear from the land and wanted to cultivate the land in its entirety. Owing to the overgrowth of prickly pear, the boundary demarcations were not distinctly visible and therefore plff applied for the survey and measurement of the land in 1932 and accordingly the measurement was made, the boundary lines were fixed in 1933.The plff thereafter began to construct the embankment for the protection of his land from stray cattle and human beings. When the bunding was in progress the enemies of the plff with the aid of the village officers began to create trouble.

(b) On the report of the encroachment by the village officers, the Mamlatdar ordered the stoppage

of bunding operation. Though plff was not bound to pay for survey measurement, plff again paid for the measurement. On 28-5-1934 the Survey Officer again made the measurement and found that boundaries were correct and in fact there was no encroachment. All these documents were produced in due course in the encroachment proceedings.

(c) Another attempt was made by the enemies of the plff to trouble him. Having failed in their attempt to snatch a portion of the land for Gavthana, they set up a demand, by the villagers for burial ground. In these proceedings they again set up for the third time, encroachment of 5 gunthas. Though this was not a regular proceeding for encroachment, the survey officer went beyond his inquiry and reported the alleged encroachment. Plaintiff however protested against this survey measurement as it was done behind his back and without due notice to plff as was necessary under the Survey Manual and plff made an appeal against this Survey measurement and in the meantime Land Records Inspector ordered the plff to remove the encroachment.

As these orders of the Government are illegal and ultravires and capricious and opposed to all known cannons of justice, the plff prays for the declaration and injunctions as stated above.

3. It is not competent for the Bombay State to agitate and re-agitate same question of encorachment in one form or another and harass the plff, and if the plff had ever made any statements contrary to his rights those statements must have been made in ignorance of the right of the plff and hence not binding on him and the plff has never admitted the alleged encroachment.

Further, the orders of the Revenue Officers in questions are contradictory, un-intelligible and of varying orders. The orders are also bad for want of definiteness.

4. The plff and the property in question with respect to which declaration and injunction are prayed for are situated

within the jurisdiction of this Court and the suit is against Bombay State; this Court alone has --- jurisdiction to try this suit.

5. The orders for the removal of embankment etc. are made finally by commissioner on 21-1-1949 and the orders being illegal and passed without any authority etc, are null and void.

6. The plff and his predecessors have been using this alleged portion of Gavthan for more than 100 years, plff has become owner by adverse possession even against Government.

7. The cause of action arose in the month of March 1952 when the Bombay State attempted to enforce the illegal order passed by the Mamlatdar, Prant Officer, the Collector of Bijapur and the Commissioner, Southern Division, from time to time.

7-A. Notice asrequired under Sec.80 of the C.P.C. is given for the information of the defendant.

8. The Court fees are paid on declaration and injunction Rs 18-12-0 and Rs 5/- and for the purpose of pecuniary jurisdiction it is the same Rs 200/-.

9. The plff prays that:-

1. It should be declared that there was no encroachment on the Gavathana by the plff and that an injunction be issued against Government not to enforce the orders of removal of the embankment on the alleged ground of encroachment, by declaring that the order was illegal an and ultra vires, capricious and unjust and anauthorised and to withdraw those order..

2. The costs of the suit should be awarded.

3. Any other equitable relief.

4. Permission may be granted to amend the plaint if and when found necessary for the equitable adjudication of the issues between the parties.

Bijapur.

Date:- 12th June, 1952. Plaintiff.

I, Tammaji Narhar Nadgir, Brahmin, 60,agriculturist of Kenur, Taluka Badami, solemnly affirm that the forefoing is true to the best of my knowledge, information and belief.

Bijapur.

12th June 1952. Plaintiff.

Filed in Court on 12-6-1952.

Sd. G.R.Jahagirdar.

Pleader.

Deficit
~~Exst~~.Court Fees to be paid within 2 weeks.

Sd.M.M.Nadkarni.

Civil Judge,Sr.Dn.

12-6-1952.

Admitted and ordered that the particulars here of be entered in the Register of Civil suits.

Sd.S.A.Anchi.

C.O.C.
5-7-1952.

Issue summons to defts for settlement of issues returnable on 21-8-1952.

Sd.M.M.Nadkarni.

Civil Judge,Sr.Dn.

10-7-1952.

Plff is dead.No heirs are brought within 3 months. The suit is therefore abates.Costs of the deft to be borne by the estate of the deceased.

16-8-1955. Sd.M.H.Kazi.

Civil Judge.Sr.Dn.

Bill of costs.

For plff.		Deft.	
1. Stamp on plaint.	18-12-0	1. Vakalatnama	0-0-0
2. Vakalatnama	0-10-0	2. Exs.8,9,10, 11,12,13.	4-6-0
3. Papers Exs. 6,17,20, 21,25,27,28,29,30,31.	6-4-0	3. Pleader's fees	18-12-0
4. Pleader's fee	18-12-0	4. Process	0-0-0
5. Process fee	2-8-0	5. Witness Bhatta	49-4-0

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6. Witness Bhatta	0-0-0	6.Commissioner's fees	0-0-0
7. Commissioner's fee	0-0-0		
	46-14-0		72-6-0
Costs disallowed		Cost disallowed.	
Exs. stated above	6-4-0	Exs.as above	4-6-0
Balance:-	40-10-0	Balance:-	Rs 68-0-0

Given under my hand and seal of this Court.

Sd. Bagwan.A.I.

Clerk. Seal of Court. Sd.M.H.Kazi.

Civil Judge,Sr.Dn.

Bijapur.

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